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EXAMINER

WONG, LESLIE

| ART UNIT | PAPER NUMBER |
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2177

DATE MAILED: 05/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/849,455

Applicant(s)

THOMSEN, DAVID J.

Examiner

Leslie Wong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 47-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 47-49 is/are allowed.
- 6) ☒ Claim(s) 1-25 and 50-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Declaration Under 37 C.F.R. § 1.131

1. Receipt of Applicant's Declaration Under 37 C.F.R. § 1.131, filed 27 February 2004, is acknowledged.
2. The Declaration filed on 27 February 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Levey and Almog references.
3. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Levey and Almog references to either a constructive reduction to practice or an actual reduction to practice.

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred."). See MPEP §715.07.

4. For example, in the independent claim 1, limitations "*updating the database to include the second item of data if the second item of data is determined to be valid*" and

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"providing the first item of economic data to the user free of charge" correspond to which part(s) of the applicant's Exhibit. Also, similar comments from the above apply to claims 5, 6, and 47 with the limitation *"updating the database to include the input data received over the Internet and updating the sample size to be a second sample size greater than the first sample size"*. Examiner could not seem to find supports for the above mentioned claimed limitations from Applicant's Exhibit A.

5. Applicant is requested to specifically point out or map particular portions of the Exhibit and dates that correspond to specific limitations of the claims in the Applicant submitted Declaration Under 37 C.F.R. § 1.131.

Claim Objections

6. Claim 47 is objected to because of the following informalities: last limitation of claim 47, the second "is " on the last line of claim 47 should be "on" (i.e., indicating over the Internet ... the second output data *is based is* the second sample size).

Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 50-54 are rejected under 35 U.S.C. 102(e) as being anticipated by **Levey** (US 2001/0032097 A1).

Regarding claim 50, **Levey** teaches a method for providing a user with economic data over the Internet, comprising:

- a). providing over the Internet a display description identifying a plurality of databases for economic data, the economic data including at least one of compensation data, cost of living data and employee benefits data with at least two of the databases providing similar types of data obtained from different sources and based on different populations (§ 0033 and 0007);
- b). receiving a selection from a user over the Internet of one of the databases (§ 0033 lines 1-5);
- c). receiving a query from the user over the Internet for data contained in the one database (§ 0033 lines 1-5);
- d). retrieving data from the one database in response to the query from the user (§ 0033 lines 5-11); and
- e). displaying to the user over the Internet the data corresponding to the query (§ 0033 lines 9-11).

Regarding claim 51, **Levey** further teaches wherein identifying a plurality of databases includes identifying a first database containing data gathered by a

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governmental entity and identifying a second database containing data received from users over the Internet (§ 0006 and 0007).

Regarding claim 52, **Levey** further teaches wherein the first and second requests are received from a single user (§ 0033 lines 1-5).

Regarding claim 53, **Levey** further teaches wherein the first request is received from a first user and the second request is received from a second user (§ 0033 lines 1-5).

Regarding claim 54, **Levey** further teaches checking the input data for validity by determining whether the input data are consistent with economic data in the database of the same type as the input data (§ 0024).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Levey** (US 2001/0032097 A1) in view of **Almog et al.** (US 2002/0002479 A1).

Regarding claims 1, 4, 14, and 23, **Levey** teaches a method and computer-readable medium in a computer system for exchanging economic data with a user, comprising:

- a). receiving a request from a user for a first item of economic data, the first item including at least one of wage data, cost of living data, cost of labor data and employee benefit data (§ 0033 lines 1-5);
- b). retrieving the first item of economic data from a database (§ 0033 lines 5-10);
- c). providing over the Internet a web page for view by the user, the web page displaying the first item of economic data (§ 0016 lines 1-3);
- d). receiving a second item of economic data from the user over the Internet in exchange for the first item of economic data, the second item of economic data including at least one of wage data, cost of living; data and employee benefit data (§ 0033 lines 1-5);
- e). checking the second item of economic data for validity by determining whether the second item of economic data is consistent with economic data in the database of the same type as the second item of data (§ 0024);
- f). updating the database to include the second item of data if the second item of data is determined to be valid (§ 0027).
- g). **Levey** does not explicitly teach a step of providing the first item of economic data to the user free of charge.

Almog et al. teaches wherein providing the first item of economic data to the user free of charge (§ 0129).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to providing the first item of economic data to the user free of charge because doing so would encourage user to provide information to the database.

Regarding claims 2, 9, 10, 18, and 19, **Levey** further teaches wherein determining whether the second item of economic data is consistent with the economic data in the database includes determining whether the second item falls within two standard deviations of a mean for data in the database averagable with the second item of data (§ 0024 and 0028).

Regarding claims 3, 8, 17, and 24, **Levey** further teaches wherein receiving the second item of economic data includes receiving at least one of the user's geographic location, position, years of experience in the position, annual salary and annual bonus or incentive payment (§ 0027).

Regarding claims 5, 6, and 15, **Levey** does not explicitly teach wherein at least reducing a fee due from the user includes eliminating any fee due from the user for the first item of economic data.

Almog et al. teaches wherein providing the first item of economic data to the user free of charge (§ 0129).

Regarding claims 7 and 16, **Levey** further teaches wherein providing the first item of economic data includes providing domestic and/or international wage data, cost of living data, cost of labor data and/or employee benefit data (§ 0033 and 0034).

Regarding claims 11 and 20, **Levey** further teaches updating the database to include the second item of economic data (§ 0027).

Regarding claims 12, 21, and 25 **Levey** further teaches wherein the user request is a first user request and wherein the method further comprises:

- a). receiving over the computer network a second user request for economic data (§ 0033 lines 1-5);
- b). retrieving economic data from the database in response to the second user request after the database has been updated to include the second item of economic data (§ 0027 and 0028); and
- c). displaying the economic data to the user over the computer network in response to the second user request, the economic data being based at least in part on the second item of economic data in the database (§ 0033 lines 5-11).

Regarding claims 13 and 22, **Levey** further teaches wherein the first item of economic data can be based on a plurality of data sources, and wherein the method

further includes receiving a request that the data be based on a selected subset of the plurality of data sources (§ 0007).

11. Claims 55-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Levey** (US 2001/0032097 A1) as applied to claims 50-54 above and in view of **Almog et al.** (US 2002/0002479 A1).

Regarding claims 55 and 56, **Levey** does not explicitly teach wherein at least reducing a fee due from the user includes eliminating any fee due from the user for the first item of economic data.

Almog et al. teaches wherein providing the first item of economic data to the user free of charge (§ 0129).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to providing the first item of economic data to the user free of charge because doing so would encourage user to provide information to the database.

Allowable Subject Matter

12. Claims 47-49 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Prior art of record fails to teach a combination of elements including updating the sample size to be a second sample size greater than the first sample size and indicating



over the Internet that the sample size on which the second output data is based on the second sample size as recited in independent claim 47.

13. Claims 48 and 49 are allowable because of their dependency on claim 47.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Baumgarten et al. (US 2002/0026452 A1)

Perell et al. (US 2001/0047347 A1)

Turnasella (US 2003/0145015 A1)

Thomas (US 2002/0002482 A1)

Vivona (U.S. Patent 5,960,407)

Zhang et al. (US 2002/0188542 A1)

Barton (US 2002/0046074 A1)

Plunkett et al. (US 2002/0143752 A1)

Farkas et al. (US 2003/0208388 A1)

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 305-3018. The examiner can normally be reached on Monday to Friday 9:30am - 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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Leslie Wong
Patent Examiner
Art Unit 2177

LW
May 11, 2004



JEAN R. HOMERE
PRIMARY EXAMINER